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Abortion — Part XVI

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Since there is no essential distinction or difference between born and unborn life, with reference to the substantial life possessed by both, there should be only one single standard employed for the protection of this life; a double standard would be inconsistent and indefensible.

In the event of a tragedy — a mine cave-in, an airplane crash, a disaster at sea, a fire — rescue operations continue until such time as all hope of survival of even one person has been abandoned. Attempts to reach victims continue as long as there is the *possibility* that even one person may still be alive. Rescue and search operations are based upon the principle that life has a value all of its own and should be prolonged and protected. Yet, some people, who claim to be unconvinced about the actual presence of human life in the fetus and conclude that there is only the *possibility* of human life — because no

one has presented proof or evidence that there is no human life present in the fetus — are willing to abandon that *possibility* of human life and allow it to be deliberately and intentionally destroyed by an abortion.

Unborn life has the same value as born life and yet proponents of abortion are willing to use an inconsistent and indefensible double standard — to protect the latter and to abandon the former.

It is also interesting to note that, in tragic circumstances, rescuers are interested only in life and the safeguarding and protecting of life; they are not concerned about the *quality* of the life that will be rescued. They are not thinking about the future status of a person who will be rescued, whether he may ultimately die, whether he will be hospitalized for a long period of time, whether he will sustain permanent damage that will cause him to become an invalid, whether he will be handicapped, whether he will ever be a useful person, whether his continued life might inconvenience someone else or whether the person, assuming the responsibility of his care, will be traumatized by the ordeal — they are

only concerned about his life and the saving of his life; they will leave his future to a Providence more prophetic than their's.

Yet, there is so much clamor, at the present time, about the physical and mental health of the child to be born. There are many in our midst who consider a handicap so serious that they would prefer the destruction, through abortion, not only of those who will *definitely* be born damaged but also of those who *possibly might* be born with a defect. To them, the *quality* of the life to be born is of greater value than the *life itself*.

If this latter norm were to be adopted in rescue operations so that only those who *certainly* will emerge without damage or handicap will be the object of such rescue efforts, only one conclusion can be drawn — a tremendously de-humanizing philosophy would have crept into our society. On the other hand, if such a norm is to be rejected for the protection and rescue of born life and used only with reference to the unborn fetus, there is an obvious inconsistency, which results in a serious discrimination and a denial to the unborn of the "equal protection of the law."

The individual conscience of the expectant mother is not necessarily a reliable or responsible norm for determining the rightness or wrongness of an abortion. Very often, what is termed "conscience" is nothing but a personal opinion or a private subjective judgment which is entirely self-oriented and reflects only what the pregnant woman wants, desires or

prefers; it is not necessarily an objective judgment that considers the right of the unborn to live and to be born.

It was the supposedly sincere conscience of millions of white people over a period of one hundred years that deprived negroes of equal opportunity in living, in housing, in education, in job opportunities, in working conditions, in voting, in social relations, in planning for the future, in passing on a legacy. History has proven that type of conscience judgment is not valid, trustworthy or reliable when the rights of other individuals are involved and are not taken into consideration in forming the conclusions. It required the intervention of the National Legislature and the passing of the Civil Rights statutes of the 1960's and the intervention of the Supreme Court of the United States and the authentic interpretation of the rights of negroes under the Constitution before negroes began to be accepted as equals, received the equal protection of the laws and were the recipients of the opportunities of the good life.

In other words, the faculty and fallible judgments of conscience — not of a few but of millions over a long period of years — had to be supplanted by the more objective, more correct and more responsible judgment of the law that considered the basic, inalienable rights of the negroes and concluded that these just could not be discounted, rejected or ignored. Whether enthusiastically received or not, whether acceptable or not, the Civil Rights Statutes are the law of the land and must be followed. Any violation of these or any continued

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discrimination against any minority will be prosecuted.

Individuals or groups — however well-intentioned or sincere — are not necessarily to be accepted as responsible and reliable in their private judgments, particularly when the rights of others are involved and more so, when the right is the right to life.

It is interesting to note that the discrimination against negroes and all minority groups originated and continued and prospered because the element of "quality" of life was introduced into the consideration of life itself. A comparison was made between human beings of different races, national background, color or religious belief and the personal judgment of some one or some group was made to the effect that some peoples are superior and some peoples are inferior. Such a judgment was based on accidental considerations while the element of substantial life, which makes all men equal, was rejected or ignored.

The introduction of "quality life" as a norm for judging whether an individual can live or is to be doomed to destruction by abortion or whether he is to be accorded or denied rights is a most dangerous, completely irresponsible and definitely indefensible instrument.

Life is a gift from God, in no way merited by the individual who possesses it. Life is a creation of God and implanted into a person by God with the result that the living person becomes a creature of God and made in His Image and Likeness. Every creature bears the stamp MADE BY GOD. Man, however, does not become

the master of the life that is within him or the master of his own body. These remain the property of God and, while their use may be entrusted to the individual throughout his lifetime, their ownership always and in all circumstances belongs to God, Who gives life originally and Who takes it away finally.

The individual does not possess that dominion over his own life and body whereby he can dispose of them arbitrarily and in accordance with his own wishes or desires. This is why suicide has always been considered wrong, illicit and sinful because it involves a serious deviation from proper conduct in that a person, who lacks ownership over his own life and body, assumes that proprietorship and decides to destroy that life and kill that body. Suicide is a wrong because there is involved a violation of the Divine Right to terminate life.

If it is true that an individual may not destroy his own life, because he lacks ownership over that life, how much more true is it that, under ordinary circumstances, another individual or groups of individuals may not destroy his life because there is a definite absence of any right over his life, including the right to terminate his life. The protection of one's life is based fundamentally on the fact that no one has the right to assault him or deprive him of his life and his right to life. Murder, manslaughter and homicide are moral evils and criminal acts precisely because, voluntarily or otherwise, someone has assumed a right, which he does not have and deprives another of his life and right to life.

Only in the very unusual and exceptional situation where one

person, without right or authorization, attacks another in such fashion or with such instrument whereby serious injury could be inflicted or the very life of the victim could be terminated and destroyed, may the second party defend and protect his life by retaliating but always within reasonable limits and never by using excessive force. However, if the very taking of his adversary's life is required and necessary and becomes the only way in which to protect his own right to life, such an action, regrettable as it may be, would be morally allowable. His right to take the life of his assailant would be considered legitimate self-defense and the original act of assault would be termed unjust aggression.

Society or government has a serious responsibility to recognize and respect the life and the right to life of every one of its members or citizens. They have the added duty to protect each one from himself in the event of self-destruction by suicide and to protect each one from every other individual so that all will be free from aggressive and unwarranted assault and from the loss of life by murder, homicide or manslaughter.

The right to life of the individual is so sacred and the protection over this right to life by society and government is such a serious responsibility that our laws and our traditions have accorded to government the right to take the life of one of its citizens only in one situation — when an individual has committed a capital offense, by unjustly taking the life of another, and then only after the accused has been apprehended, has been given the right to be represented by counsel of his choosing, has been allowed to face his accusers, has been advised of the charges, granted the right of cross-

examination and the presentation of his own evidence, has been accorded all defenses recognized by the law, has been found guilty by a jury of his peers, has exhausted all appeals and is not a candidate for clemency.

The right to life of every individual is so precious and is guarded so jealously that the government is given only a restricted and limited right over the life of its citizens. It may not put any of its peoples to death arbitrarily or at will. However, in order to repel the unjust aggression of another nation, it may call upon its men to volunteer their service or it may conscript its manpower and expose them, through the ravages of war, to the danger of the loss of their own lives and authorize them to take the lives, if necessary, of members of the opposing army.

Protection of a country, its prestige and its inviolability is a corporate self-defense against a large scale unjust aggression.

Personal self-defense, capital punishment and the resistance of a nation to an unwarranted act of aggression and an unjustified attack on its honor are the only justifiable reasons for a direct assault on the life of an individual. The destroying of innocent human life in any other set of circumstances or for any other reason is totally unconscionable and completely without justification.

One of the differences between a free society and an authoritarian or totalitarian state is the freedom of the individual to plan his own life and to pursue his own goals of achievement. A dictatorship maintains very severe surveillance and control over its citizens, who become slaves to the ideology and pursuits of the state and

their freedom from exile and their very right to life is at the mercy of the state. The results can be very dehumanizing.

In Nazi Germany in the 1930's, Adolph Hitler and his lieutenants combined a philosophy of control over the lives of its citizens and their very right to life with a "quality of life" yardstick and judged that the Jewish race was an inferior race historically, politically and socially and, thereby, sentenced over 7,000,000 Jews to the death chambers and crematoria of Auschwitz, Belsen, Dachau and Buchenwald. Seven million Jews died because Hitler had control over their right to life and had judged them to be of inferior quality.

No one outside of Hitler's close coterie of advisers attempted to justify the deliberate, intentional and cold-blooded extermination of seven million innocent people in the gas ovens and concentration camps of Germany. Every nation and all peoples viewed this dehumanizing spectacle as the worst tragedy of the human race and this evaluative judgment was sustained by the International Tribunal convened to investigate the war crimes at Nuremberg.

All peoples wondered how such could happen in such a civilized and cultured country as Germany. It began simply with the first piece of legislation passed by the Reichstag. It was legislation which said that life could be seen only from an economic or a sociological or a racist point of view. The first laws, enacted under Nazism, never envisioned the final horrendous conclusions which would be reached in the burned and dead bodies of Belsen, Auschwitz, Dachau or Buchenwald.

But step by step that position was irreversibly reached and all this in the name of legislation, which had as its foundation, the belief that reverence for all life is not required and is not demanded by human society.

It is interesting to note with reference to abortion, the position and position of three eminent German Protestant Theologians who opposed Hitler at risk of their lives:

Professor Helmuth Thiele of the University of Hamburg has stated that once impregnation and conception have taken place "it is no longer a question of whether the persons concerned have responsibility for a possible parenthood; they have become parents."

Professor Karl Barth of Basel has concluded: "he who destroys germinating life kills a man."

The very prominent Dietrich Bonhoeffer, who was hanged in a Nazi prison camp, judged that "abortion is nothing but murder."

These three Theologians were concerned that the philosophy of Nazism spurned and rejected the doctrine of the importance and sacredness of all human life and had concentrated on establishing a questionable man-made standard of "quality of life" which immediately has to distinguish between that which is superior and that which is inferior with the obvious resultant that the former must survive and the latter becomes expendable and

disposable. Such a norm violates the fundamental tenet that all life created by God is good and that all life is created equal. Where God does not establish, in His own creation, a standard of inferiority and superiority, man should also resist the urge to separate and isolate life by using a norm of quality.

Do we never learn from the bitter experiences of history? Have we not learned that to preserve the life and the right to life of people, we must not give, by legislation, control over their lives to any one, to any group, to society or to a government? Have we not learned from Nazi Germany that you can't adopt a philosophy based on the quality of life and couple with this a control over life without laying the foundation for the merciless deaths of millions of innocent persons?

Yet, is this not exactly what we are about to do if, as requested, we amend our existing abortion laws or repeal them all together? Are we not putting defenseless and innocent unborn human life under the control of the expectant mother or her physician or a group of psychiatrists or a hospital board and giving these weak, fallible people the divine right over human life and the opportunity, by their decisions, to exterminate and destroy millions of innocent unborn human lives? Is not an expectant mother, who seeks an abortion, not assuming unto herself a right that, under the circumstances, has never been accorded to any person, to any group of persons, to any society or to any government by our culture, civilization or our history?

How does she attempt to justify this

destruction of human life? She does it not on the principle and the philosophy of the right to life but on the questionable standard of the quality of life. She claims that if she cannot afford another child or if she does not want another child or if she would be upset by the birth of another child or if the child will be born illegitimate or if there is a possibility that the child might be born handicapped or retarded or if the child will not be well born with the best of opportunities, she has the right to terminate the life of this unborn child and destroy him.

The insanity of legislation that would give the control over innocent unborn, human life to anyone! The error of neglecting and ignoring the right to life and the mistake of overemphasizing the importance of the quality of life! The folly of joining both in the repeal or amendment of present abortion laws so that, on request or on demand, a mother-to-be can decide to destroy her own flesh and blood!

Is it not inconsistent that our society is presently mounting a campaign to legalize abortion whereby possibly 3,000,000 innocent human lives may be destroyed *each year* when the same society is so critical of the Vietnam war that has seen 50,000 American servicemen killed in *five years* and so horrified at the massacres of Song Mi and My Lai, which may count 500 Vietnamese victims and so compassionate as to seek the abolition of the death penalty because it just cannot understand the state, which has the right to take the life of a convicted killer, exercising that right?

In an era in which we are trying desperately to make our life more safe and secure by diminishing the number of automobile and pedestrian fatalities, can we justify the legalization of abortion that would claim a thousand times more victims?

At a time when we are attempting to conserve our natural resources and park areas for the enjoyment of our people, how can we explain the current interest in legalizing abortion that would possibly destroy 3,000,000 innocent, defenseless human lives each year. Are public parks more important than our greatest human resource — innocent life?

Is it not a bit ridiculous to be so concerned about air, noise and water pollution and be prepared to spend millions of dollars and to use the most sophisticated techniques to purify our air and streams and, at the same time, so to devalue human life, that we are considering the extermination of 3,000,000 pure human lives each year by repealing our abortion laws? Could the most polluted air and water claim that many victims each year, every year? Can clean air and pure water claim greater value than human life? If so, where is our value system?

We, who oppose the legalization of abortion, are not against the great American dream of "the good life" or of being well born. We want every child to be wanted; to be born into a family that can provide him with good housing, good clothing, good substantial and nutritional food, good educational opportunities, good social and recreational opportunities, a hope for the future; to be born into a family that can give him love and affection

and a sense of belonging and security; to be born physically and mentally alert and without handicap, damage or defect.

We believe in the "good life" and in "quality life" and we are convinced that every effort should and must be made to insure that every child born is born well. However, the quality of life should not be attained at the expense of the value and sacredness of every human life; the end, however praiseworthy, does not justify the means used to achieve it.

If basic human life, in whatever form or circumstances it may be born, is not respected for what it is — the creation of God and the greatest good — and is not considered sacred, the "quality of life" will have no meaning and will not long endure because life becomes a disposable and expendable commodity, subject to the value system accepted by the community leader or individual, who will be making the ultimate decision to destroy life.

Human life itself is a substance and the "quality" of that life is only an accident. An accident can never be considered more important than the substance in which it exists or it modifies. Without life, there can never be a "quality of life". This makes life a much more essential, necessary and important good than the "quality of life" which will modify it. The "quality of life" can never be preferred over or before life itself or considered to have greater importance than the very foundation of life. The "quality of life" can never be achieved by the intentional and deliberate destruction of life itself and never exist

apart from and separate from life. A "quality of life" that is attained or purchased at the expense of life or is recognized as separate from and superior to life itself will have no meaning or lasting importance.

It is only when life has a value and an importance prior to and independent of its quality that life is really respected; it is only when life is considered sacred that life will be protected; it is only when life is protected that everyone's life is safe against attack and secure against destruction and extermination.

What about the handicapped child? We would hope that every child, in the future, could and would be born without damage, handicap or defect. We would certainly recommend and favor any and all types of research that will enable this dream to be realized. However, in the meantime, the destruction of a fetus that *might possibly* be born damaged will never help this goal to be achieved. The aborting of such a human life would never spur on the scientific investigation that will ultimately find the answer to the physical handicap or the mental retardation. If we were to destroy each such fetus, we would use this as an answer to the problem and this answer is negative, destructive and totally unacceptable.

In the past, rubella, suffered by the mother in the early stages of pregnancy, has been the most serious known cause of physical or mental defect. An in-depth study of such cases has revealed that only about 20% of such mothers gave birth to damaged children. However, if abortion were to become the answer, and since there is no way to predict which child would be handicapped and which would be

born normal and healthy, all fetuses would have to be aborted. In that eventuality, *eight* healthy fetuses would be killed in order to protect *two* damaged fetuses from being born. That type of solution, on the basis of averages, just does not make sense!

But of the two born with a handicap, many of their defects, e.g., cataracts, heart complications, are treatable and remediable and, in these cases, abortion would kill many lives that could be very healthy and normal after treatment. Abortion, in these instances, is not a very prudent solution.

Of the remaining, those children, who are born with permanent and irreversible handicaps, can be educated and rehabilitated, in accordance with some very modern and sophisticated programs, and become useful citizens, who would be leading very meaningful lives.

The pages of our national history are replete with the inspiring examples of great leaders, great educators, great artists, great people who overcame their handicaps, lived courageously and made tremendously important and lasting contributions to our way of life. Many of these would never have been allowed to have been born if the "quality of life" standard had been in effect when they were born and our country would have been the poorer if they had never lived.

One of the terrifying effects of a norm that prescribes that only healthy, undamaged life will be allowed to be born is that if a fetus with actual human life *can be destroyed* before birth because it *might possibly* be born handicapped or defective, then it will not be long

before our society will insist that if a child is *actually* born damaged that he *must be destroyed*. This is the inevitable, logical resultant and anyone who says that infanticide will not follow, is giving only an empty promise in order to reassure the citizenry and make them complacent.

If infanticide is consistent with feticide, then the destruction of the chronically ill, the invalid, the senile, the aged and handicapped will and necessarily follow — for the same reasons of logic and consistency. If the state of health or quality of life is to become the guideline whereby life will be allowed to be born or to be sustained and if the extent of the useful contribution to one's fellow man will be the secondary measuring stick, then society will first allow and then demand the destruction of the life of the unfit. Euthanasia will then be a part of our way of life and our culture.

As set forth with reference to Naziism, once the first act of the Legislature is passed, which recognizes a difference in life on the basis of health and allows for the intentional destruction of life, considered inferior because of handicap, an irreversible process is set in motion that will end in our own Dachau, Buchenwald, Auschwitz and Belsen. What has happened in Nazi Germany can also happen here if we follow the same philosophy that some life can be considered superior and some life can be considered inferior.

When any control over our life is placed in the hand of anyone — the

expectant mother, society or the government — except in the cases of the commission of a capital crime, personal self-defense or in a just war, the life of no one of us is safe and secure. When that day arrives it will be a terrifying day for all of us and it might just happen that the woman, who dared to decide on and order the execution of her own child, might live to realize and experience the decision of someone else who orders her premature execution.

Very often, it is not compulsion for the possibly handicapped child that prompts or suggests the abortion of that child but rather the emotional reaction of the mother, her responsibility in the caring for and raising of the child and the financial investment of the family in providing necessary therapy and rehabilitation. In those instances, the abortion would be done for the meanest and least rational motives. In this regard, let us listen to the remarks of the majority opinion of the Supreme Court of the State of New Jersey: "... it may have been easier for the mother and less expensive for the father to have terminated the life of their child while he was an embryo, but the alleged detriments cannot stand against the preciousness of the single human life ..."¹

In ordering the abortion, the mother does not consult her own child to determine if he would prefer to have his life extinguished by abortion before he is born rather than to live as a handicapped person. Life is so precious and so important and one receives only one opportunity to live that most, if not all, would choose to be allowed to be born even as a damaged individual rather than to be deprived of all chance to live. In this

connection, the Supreme Court of New Jersey states:

"... The infant plaintiff would have us measure the difference between life with defects against the utter void of nonexistence, but it is impossible to make such a determination. This Court cannot weigh the value of life with impairments against the nonexistence of life itself.² ... It is basic to the human condition to seek life, and hold on to it however heavily burdened. If Jeffrey could have been asked as to whether or not his life should be snuffed out before his full term of gestation could run its course, our felt intuition of human nature tells us he would almost surely choose life with defects as against no life at all.³

"... The right to life is inalienable in our society. ... Examples of famous persons who have had great achievement despite physical defects come readily to mind, and many of us can think of examples close to home. *A child need not be perfect to have a worthwhile life* (emphasis supplied) ... The sanctity of the single human life is the decisive factor in this suit in tort. Eugenic considerations are not controlling. *We are not talking here about the breeding of prize cattle* (emphasis supplied). ..."⁴

It is only when life itself is considered sacred and respected and it is only when life is preferred before and above "quality of life" that the inalienable right of the fetus to be born can be fulfilled and the right of everyone to enjoy his life, free from assault and premature termination, can be achieved.

What we are really balancing is the right of the unborn fetus, who may be born damaged, to be born with defect or not to be born at all. By assumption, there is no choice available to be born normal and without handicap. When one considers that only one opportunity exists for that individual ever to be born and if he is not given this chance and weight these

along with the great joy and usefulness of the life of a handicapped person, there seems to be only one rational and reasonable decision to make — allow the child to be born.

If we have problems with the physically handicapped, the mentally retarded or the defective, let us not try to solve these tremendously serious and important problems by killing these unfortunate human beings before they are born. Let us not equate damaged life with an inferior life. Let us gather together our greatest scientists, our gifted and talented research people who, thank God, were born normal and were endowed with great abilities — and let them investigate and discover the answers so that, in the future, these anomalies can be prevented. This is a positive and constructive approach that will actually find answers to the problem of birth defects while it spares the lives of millions of children. This is in accordance with the best traditions of these United States; this type of approach is what has made America great; this is worthy of this great land of ours. It is respectable and honorable — unlike the negative, destructive approach that would call for abortion or justify abortion when there was a possibility of a fetus being born defective.

REFERENCES

1. *Gleitman v. Cosgrove and Dolan*, 49 N.J. 22, 227 A. 2d (1967) at 693
2. *Ibidem* at 692
3. *Ibidem* at 693
4. *Ibidem*

(Editor's Note: This series will continue in the February, 1971 issue of the *Linacre Quarterly*.)